

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADFORD METCALF,

Defendant.

Case No. 1:98-CR-54-02

Hon. Richard Alan Enslen

ORDER

Defendant Bradford Metcalf has filed two motions which both relate to his ongoing attempts to obtain property seized by the Government pursuant to Federal Rule of Civil Procedure 41(g). Oral argument is unnecessary. *See* W.D. Mich. L.Cr.R. 47.2(d).

Defendant's Motion to Recuse is largely repetitive of a similar motion which was properly denied by Order of June 19, 2002. Defendant's treatment in judicial proceedings, including his motion filing, both before and after that date has been dictated by the law and the facts and circumstances of the case. Just because Defendant has not received the relief he has sought at times is not a reason for recusal. *Liteky v. United States*, 510 U.S. 540, 548 & 555 (1994). As such, the Motion must be denied.

Defendant has also moved for reconsideration of the Order dated December 22, 2005 on the ground that the Order was made without awaiting a reply from him. The underlying contempt motion, however, was a non-dispositive motion within the meaning of Western District of Michigan Local Civil Rule 47.2 as to which reply was not permitted without leave of court. Although not required, the Court has since considered the substance of Defendant's reply (Dkt. No. 435). The

reply does not persuade the Court that contempt sanctions are appropriate. The reply states that Defendant sent two letters to Assistant United States Attorney Lloyd Meyer and Agent Mark Semear advising them that he had designated Ty Petty and Myra Petty to receive property on his behalf. Even if such is true (which is unknown), then Defendant has not shown the violation of a clear and definite court order. The Order of August 11, 2005 required the return of non-contraband property to a “duly-appointed custodian.” (Dkt. No. 420 at 2.) No custodian has been duly appointed by this Court, nor by any other court to the best of the Court’s knowledge. As such, contempt sanctions are inappropriate.

THEREFORE, IT IS HEREBY ORDERED that Defendant Bradford Metcalf’s Motion to Recuse and Motion for Reconsideration (Dkt. Nos. 440 & 441) are **DENIED**.

DATED in Kalamazoo, MI:
January 26, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE